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HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No.506/2004

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellants Plaintiffs

1. Trilochan aged 52 years, S/o Daniram,
2. Shobha nand aged 42 years, S/o Daniram
3. Kekti aged 67 years, D/o Late Ramcharan,
4. Nanki dai aged 62 years, D/o Late Ramcharan, all r/o village Devgaon, Tehsil Sarangarh Distt. Raigarh, C'garh number 3 and 4 presently residing at village Banhar, Tehsil Sarangarh District Raigarh.

Versus

Respondents (Defendants)

1. Daya Ram S/o yudhistir, aged 52 years.
2. Devisingh s/o late Ramcharan, aged 70 years.
3. Mohan lal s/o late Baliram, aged 30 years
4. Chandra Kanti d/o baliram, aged 32 yrs.
5. Fool kunvar wd/o late Baliram, All r/o village Devgaon Tehsil Sarangarh Distt. Raigarhl, C'garh.
6. State of Chhattisgarh, Through Collector Raigarh, C'garh.

Memo of second appeal under Section 100 of the Code of Civil Procedure

Present:-
S.N. Nande, counsel for the appellants.
Shri Akhil AGrawai, PL for the State.

ORAL ORDER

(Passed on 1st August, 2007)

Heard on admission.

(2) This second appeal is filed by the unsuccessful plaintiffs who are aggrieved by the judgment and decree dated 19.7.2004 passed in civil suit No.13-A/2003 by the I[st] Additional District Judge, Raigarh, whereby affirming the judgment and decree dated 17.01.2004 passed by the Civil Judge, Class-II, Sarangarh in civil suit No.17-A/1999, the appeal was dismissed.

(3) The appellants/plaintiffs had filed civil suit No.17-A/1999 for declaration that the transfer of suit land by the defendants No.2 & 3 in favour of the defendant No.1 by a registered sale deed was void because the property was undivided coparcenary property.

(4) Both the Courts below have recorded a concurrent finding under a family arrangement the parties were in separate possession of the lands allotted to them. In the plaint paragraph No.3 it has been specifically pleaded as under:-

> "यह कि वादी दानीराम एवं उसके समस्त भाई–बहनों का शादी–गौना हो जाने के उपरान्त परिवार में सुख–शांति व पारिवारिक व्यवस्था बनाये रखने के उद्देश्य से तीनों भाई क्रमशः दानीराम, देवीसिंह, व बलीराम द्वारा अपने–अपने परिवार का चूल्हा–चौका पृथक–पृथक कर लिए और अपने–अपने परिवार के खर्च आदि के लिए अपनी–अपनी सुविधा व आवश्यकतानुसार तीनों भाई एक–एक तिहाई जमिनों का कब्जा काश्त पृथक–पृथक रूप से करते हुए जीवन निर्वाह करते हुए चले आ रहे हैं और दोनों बहन वादी क. चार व पांच को उनके स्वत्वांश के बदले सालाना मान–सम्मान करते हुए रोटी, कपड़ा व नगदी रकम आदि देते चले आ रहे हैं और इस पारिवारिक व्यवस्था से उपरोक्त संबंधित पक्षकार पूर्णतः सन्तुष्ट हैं."

(5) The sole contention raised by the learned counsel for the appellants/plaintiffs in this appeal that the plaintiffs No. 4 & 5 namely Kekti and Nanki Dai being daughters did not get the share in the family arrangement and therefore, the same could not be construed as a family partition is thus liable to outright rejection. Since the finding recorded by both the Courts below regarding the family arrangement and the separate possession thereunder, is wholly a finding of fact and is based on appreciation of evidence, oral as well as documentary, I am of the considered opinion that no substantial question of law arises for determination in this appeal, which is accordingly dismissed at the stage of admission.

(6) In view of the above, I.A. No.3113/2004 for urgent hearing stands disposed of.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya